FILE COPY

Office - Supreme Court, U. S.
FILED
SEP 27 1946
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946

No. 542

IN THE MATTER OF

BURTON COAL COMPANY, et al.,

Debtors.

MARJORIE HAIR BURTON, individually and as Administratrix of the Estate of Frederic A. Burton, deceased,

Petitioner,

vs.

J. ROY BROWNING, Trustee and FREEMAN COAL MINING CORPORATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

JOHN J. DOWDLE,
Attorney for Petitioner.

JOSEPH KEIG,
Of Counsel.

BARNARD & MILLER, 33 S. Market St., Chicago. FRAnklin 0562

INDEX.

PAGE

Statement of the matters involved..... 1

Jurisdiction of this court..... 4

Questions presented..... 5

Reasons relied on for the allowance of the writ..... 5

Brief 7

- Opinions below..... 7
- Jurisdiction of this court..... 7
- Statement of the case..... 7
- Articles of the Constitution and federal statute involved 7
- Specification of assigned errors..... 7

Summary of argument..... 8

Argument 9

Conclusion 9

Appendix 13

CASES CITED

PAGE

Ace Harvester Co. v. Beekman Lumber Co., 222 U. S. 300, 308 9

Campbell v. Porter, 162 U. S. 478, 40 L. Ed. 1044 16 S. Ct. 871 ..... 4, 10

Glenny v. Langdon, 98 U. S. 20 9

Meyer v. Fleming, 66 Sup. Ct. 382 ..... 5, 9

Moyer v. Dewey, 103 U. S. 301, 303 9

Nutt v. Knut, 200 U. S. 13, 18-19, 26 S. Ct. 216, 50 L. Ed. 348 4

Pittsburgh & Railway v. Loan & Trust Co., 172 U. S. 493, 507-510, 43 L. Ed. 528, 19 S. Ct. 238 4

In re Prudence, 316 U. S. 89, 95 9

Trimble v. Woodhead, 102 U. S. 647 9

Windsor v. McVeigh, 93 U. S. 274, 23 L. Ed. 914 ..... 4, 10

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946

No. .....

IN THE MATTER OF

BURTON COAL COMPANY, et al.,

Debtors.

MARJORIE HAIR BURTON, individually and as Administratrix of the Estate of Frederic A. Burton, deceased,

Petitioner,

vs.

J. ROY BROWNING, Trustee and FREEMAN COAL MINING CORPORATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

MAY IT PLEASE THE COURT:

Your petitioner respectfully shows:

STATEMENT OF THE MATTERS INVOLVED:

Proceedings for the corporate reorganization of the Burton Coal Company and its subsidiary companies were

instituted in the District Court of the United States for the Northern District of Illinois, Eastern Division, in September, 1938, and on or about the 9th day of September, 1938, J. Roy Browning was duly appointed Trustee of the estate of said debtors. Rec. 5.

Prior to September, 1938, petitioner's husband, her predecessor in title, since deceased, held title to the lands here involved which were acquired from the C. W. & F. Coal Mining Company under an original contract of purchase in the year 1931, at which time petitioner made a down payment of $5,526.71. Rec. 4.

From September, 1938, to April 1, 1942, the said Trustee J. Roy Browning leased said lands from petitioner and paid as rentals therefor the sum of $22,451.16. Rec. 5.

A plan of reorganization was confirmed by the District Court in March, 1942, and on the 1st day of April, 1942, the assets of the debtor corporations were transferred to the respondent Freeman Coal Mining Corporation pursuant to said plan. Rec. 5.

On April 1, 1942, the Trustee J. Roy Browning became President of the respondent Freeman Coal Mining Corporation. On May 12, 1942, Browning as said Trustee paid the sum of $4,036.12 as rent or royalties for the use of said land for the period up to and including the last day of March, 1942. Rec. 5.

The plan of reorganization confirmed in said cause in no manner whatsoever dealt with petitioner's lands or any right or claim thereto or interest therein. Rec. 5, 6.

After said plan was consummated and on June 24, 1942, respondent Freeman Coal Mining Corporation, without authorization or direction from the District Court as a court of bankruptcy, instituted proceedings in the Circuit Court of Cook County, Illinois, seeking to have petitioner declared trustee of said lands for the use and benefit of

the debtor Burton Coal Company and to have said respondent Freeman Coal Mining Corporation declared successor in interest to said debtor Burton Coal Company. Rec. 6.

Thereafter the State Court decreed that the Freeman Coal Mining Corporation be deemed to have succeeded to the rights and interests of the debtor Burton Coal Company, its stockholders, creditors and J. Roy Browning Trustee in said proceedings. R. 7.

From said decree petitioner appealed to the Supreme Court of Illinois, which affirmed said decree in January, 1945. R. 7. 388 Ill. 604, 58 N.E. (2nd) 589.

Petitioner thereupon filed a petition to the Supreme Court of the United States for a writ of certiorari to the Supreme Court of Illinois which was denied on the 21st day of May, 1945.

On the 26th day of June, 1945, petitioner sought leave to intervene in the reorganization proceedings and to have the District Court adjudicate the rights of petitioner, the Trustee and the respondent Freeman Coal Mining Corporation in said lands. The District Court denied petitioner's motion for leave to intervene and the Circuit Court of Appeals for the Seventh Circuit, on motion of respondent Freeman Coal Mining Corporation, dismissed said appeal. R. ..., 155 Fed. 2nd 561. A petition for rehearing was denied by said Circuit Court on June 28, 1946, and this application is made within the three months allowed under Section 237 (b) Judicial Code of the United States as amended (28 U.S.C.A., Sec. 344 (b)).

JURISDICTION OF THIS COURT.

This court has jurisdiction of this cause under Section 237 (b) Judicial Code of the United States as amended (28 U.S.C.A. Sec. 344 (b)).

The Circuit Court of Appeals decided that the State Court proceedings instituted without authority of the bankrupty court were *res adjudicata* of petitioner's right to intervene and be heard in this case which involves a matter and proceeding in bankruptcy. This raises a federal question, for the federal Constitution and statutes provide:

The jurisdiction vested in the courts of the United States of all matters and proceedings in bankruptcy shall be exclusive of the courts of the several states. U. S. Judicial Code, Section 256 (28 U.S.C. 371) Art. 1, Section 8 Clause 4 Federal Constitution. This petitioner by the holding of the Circuit Court of Appeals is deprived of a right or immunity specially set up and claimed under the Constitution and a statute of the United States (R. 7). In this situation this court has jurisdiction. *Nutt* v. *Knut,* 200 U. S. 13, 18-19, 26 S. Ct. 216, 50 L. Ed. 348; *Pittsburgh & Railway* v. *Loan & Trust Co.,* 172 U. S. 493, 507-510, 43 L. Ed. 528, 19 S. Ct. 238.

This Court has jurisdiction to determine that the act of a state tribunal beyond its powers is null and void, and can be attacked at any time, even in the first instance on appeal. *(Campbell* v. *Porter,* 162 U. S. 478, 40 L. Ed. 1044 16 S. Ct. 871.) And it may not be validated either by waiver or consent. *Windsor* v. *McVeigh,* 93 U. S. 274, 23 L. Ed. 914.)

QUESTIONS PRESENTED.

A.

1. Does a court of bankruptcy exercise exclusive jurisdiction over all of the property and assets of a debtor under Chapter X of the Bankruptcy Act?

2. Is a plan of reorganization, confirmed by the Bankruptcy Court, conclusive of the property dealt with by the plan and binding upon the debtor, its stockholders, creditors and the corporation organized for the purpose of carrying out the plan?

B.

1. Has a state court jurisdiction to review the proceedings of a District Court of the United States sitting as a court of bankruptcy?

2. Has a state court, without authority from the Bankruptcy Court, jurisdicton to administer and direct the distribution of assets allegedly belonging to a debtor under Chapter X of the Bankruptcy Act?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

Upon the filing of the petition for reorganization in this proceeding any claim or right of action which existed against petitioner in behalf of the debtor Burton Coal Company became an asset of the debtor's estate (Sections 70, 111 Bankruptcy Laws 1938) and the Bankruptcy Court has exclusive jurisdiction to determine how a cause of action which has become a part of the bankrupt's estate shall be enforced. *Meyer* v. *Fleming,* 66 Sup. Ct. 382;

Glenny v. *Langdon*, 98 U. S. 20; *Trimble* v. *Woodhead*, 102 U. S. 647; *Moyer* v. *Dewey*, 103 U. S. 301, 303; *Acme Harvester Co.* v. *Beekman Lumber Co.*, 222 U. S. 300, 308.

The Circuit Court of Appeals by holding the Illinois State court proceedings were *res adjudicata* of petitioner's right to intervene in the reorganization proceedings decided that the Illinois State Court had jurisdiction without authorization of the Bankruptcy Court to determine how causes of action which have become part of the bankrupt's estate shall be enforced. The decision of the Circuit Court of Appeals is a matter of major concern to the Federal judicial process and calls for the exercise of this Court's power of supervision.

Wherefore your petitioner prays that a writ of certiorari issue under the seal of this court, directed to the Circuit Court of Appeals for the Seventh Circuit, to the end that this cause may be reviewed and determined by this Court, as provided by the statutes of the United States and that the judgment herein of said Circuit Court of Appeals be reversed by this Court, and for such further relief as to this Court may seem proper.

JOHN J. DOWDLE,
Attorney for Petitioner.

JOSEPH KEIG,
Of Counsel

Dated September 24, 1946.

BRIEF.

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals is reported in 155 Fed. (2nd) 561, and appears in full beginning at page———of the record.

The memorandum of the District Court filed herein appears beginning at page 58 of the record.

JURISDICTION OF THIS COURT.

A statement as to jurisdiction appears in this petition, pages 4, 5.

STATEMENT OF THE CASE.

A summary and statement of the matters involved are set forth in the petition pages 1 to 3 and are readopted here.

ARTICLES OF THE CONSTITUTION AND FEDERAL STATUTE INVOLVED.

The constitutional provisions and statutes involved are set forth in the appendix pages 13-21.

SPECIFICATION OF ASSIGNED ERRORS.

The Circuit Court of Appeals erred in its refusal and failure to hold that the District Court of the United States as a court of bankruptcy had exclusive jurisdiction to determine how a cause of action which has become a

part of the debtor Burton Coal Company's estate shall be enforced.

The Circuit Court of Appeals erred in its refusal and failure to hold that the plan and order confirming said plan entered in the reorganization proceedings were conclusive of the property dealt with under said plan and binding upon the Freeman Coal Mining Corporation, which acquired the assets of the debtor pursuant to the provisions of said plan.

The Circuit Court of Appeals erred in holding that the State Court proceedings were *res adjudicata* of petitioner's right to intervene and be heard by the District Court on matters and proceedings in bankruptcy.

SUMMARY OF ARGUMENT.

If the Trustee ever had a cause of action against petitioner, he still has it and the Bankruptcy Court alone has jurisdiction to determine how it shall be enforced.

If the Bankruptcy Court has exclusive jurisdiction to determine how a cause of action shall be enforced and the exclusive right to direct the distribution of the assets of a debtor, then the Circuit Court of Cook County lacked jurisdiction of the subject matter and its decree is wholly void and may be attacked at any time.

ARGUMENT.

The Circuit Court of Appeals was imposed upon by the respondents, appellees below, who interjected questions which were wholly foreign to the issues raised by appellant's motion. The ownership of the stock in the debtor Burton Coal Company and the right of the pledgee of said stock to accept the plan of reorganization have been finally adjudicated in the reorganization proceedings and the respondents, appellees, below, alone call the matter into question.

The only question involved in this case is whether the Trustee in Bankruptcy had or has a cause of action against petitioner affecting her title to valuable coal lands. If the Trustee ever had a cause of action against petitioner he still has it and the Bankruptcy Court alone has jurisdiction to determine how it shall be enforced. *Meyer* v. *Fleming*, 66 Sup. Ct. 382; *Glenny* v. *Langdon*, 98 U. S. 20; *Trimble* v. *Woodhead*, 102 U. S. 647; *Moyer* v. *Dewey*, 103 U. S. 301, 303; *Acme Harvester Co.* v. *Beekman Lumber Co.*, 222 U. S. 300, 308. The bankruptcy law provides its own criteria for the distribution of assets of a debtor or bankrupt. *In re Prudence*, 316 U. S. 89, 95.

The District Court distributed the known assets of the debtors in accordance with the plan of reorganization which it approved and confirmed. (R. 9 to 31, 32 to 36.) It cannot be assumed that the District Court would have distributed petitioner's lands in the manner prescribed by the Circuit Court of Cook County. Nor can it be assumed that the District Court, as a court of bankruptcy, would have distributed under any circumstances petitioner's

lands when that court was given, by the trustee's conduct and his payment of rents to the petitioner, every reason to believe that said lands belonged to the petitioner alone and were no part of the assets of the debtor estates.

Section 216 of the Bankruptcy Law, subparagraph 13, directs that the plan of reorganization under Chapter X of the Bankruptcy Act shall provide for the retention and enforcement by the Trustee of all claims not settled or adjusted in the plan.

The Circuit Court of Cook County was without jurisdiction to determine that the Trustee J. Roy Browning in the reorganization proceedings was derelict in his duty in not including in the plan a provision for the enforcement of the claim now asserted against petitioner by the respondent Freeman Coal Mining Corporation affecting petitioner's title to said lands. The District Court alone has the power to determine whether a claim exists against petitioner and to direct its enforcement.

If it is true that the Bankruptcy court has exclusive jurisdiction to determine how causes of action shall be enforced and to direct the distribution of the assets of a debtor, then the Circuit Court of Cook County was precluded from exercising those functions, lack jurisdiction of the subject matter, and its decree, purporting to determine matters solely within the jurisdiction of the Bankruptcy Court, is wholly void and may be attacked at any time, even in the first instant on appeal. (*Campbell* v. *Porter*, 162 U. S. 478, 40 L. ed. 1044, 16 S. Ct. 871.) And said decree may not be validated either by waiver or consent. (*Windsor* v. *McVeigh*, 93 U. S. 274, 23 L. ed. 914.)

CONCLUSION.

The petitioner respectfully submits that the judgment in the Circuit Court of Appeals should be reversed, and that the District Court of the United States, for the Northern District of Illinois, Eastern Division, should be directed to hear and determine the petition of Marjorie Hair Burton, petitioner herein.

JOHN J. DOWDLE,
Attorney for Petitioner.

JOSEPH KEIG,
Of Counsel

Dated September 24, 1946.

APPENDIX.

CONSTITUTION AND FEDERAL STATUTES.

Federal Constitution.

Article I, Section 8, Clause 4: The Congress shall have Power To establish * * * uniform laws on the subject of Bankruptcies throughout the United States.

Article III, Section 2:

"(First) The judicial power shall extend to all cases, in law or equity, arising under this Constitution. The laws of the United States, * * *."

Federal Statutes.

Judicial Code, Section 256.
(28 U. S. C. 371)

EXCLUSIVE JURISDICTION OF UNITED STATES COURT.

The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States: * * *
Sixth. Of all matters and proceedings in bankruptcy.

Federal Bankruptcy Act.

Chapter I—Definitions.
Section 1, Clause (10): "Courts of bankruptcy" shall include the district courts of the United States * * *.

CHAPTER II—COURTS OF BANKRUPTCY.

"Sec. 2. Creation of Courts of Bankruptcy and Their Jurisdiction.—a. The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested, within their

respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this Act, * * *."

"(9) Confirm or reject arrangements or plans proposed under this Act * * *."

"(15) Make such orders, issue such process, and enter such judgments * * * as may be necessary for the enforcement of the provisions of this Act. * * *"

CHAPTER IV—COURTS AND PROCEDURE THEREIN.

CHAPTER VII—ESTATES.

"Sec. 70. Title to Property. a. The trustee of the estate of a bankrupt and his successor or successors, if any, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition in bankruptcy or of the original petition proposing an arrangement or plan under this Act, * * * ; (5) property, including rights of action, which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him, or otherwise seized, impounded or sequestered: * * *

"i. Upon the confirmation of an arrangement or plan, or at such later time as may be provided by the arrangement or plan, or in the order confirming the arrangement or plan, the title to the property dealt with shall revest in the bankrupt or debtor, or vest in such other person as may be provided by the arrangement or plan or in the order confirming the arrangement or plan."

CHAPTER X—CORPORATE REORGANIZATIONS.

Article I—Construction.

Sec. 101. The provisions of this chapter shall apply exclusively to proceedings under this chapter.

Sec. 102. The provisions of chapters I to VII, inclu-

sive, of this Act shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: *Provided, however,* That section 23, subdivision H and n of section 57, section 64, and subdivision f of section 70 shall not apply in such proceedings. • • •

Article III—Jurisdiction and Powers of Court.

"Sec. 111. Where not inconsistent with the provisions of this chapter, the court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property, wherever located.

• • • • • • •

"Sec. 114. Upon the approval of a petition, the jurisdiction, powers, and duties of the court and of its officers, where not inconsistent with the provisions of this chapter, shall be the same as in a bankruptcy proceeding upon adjudication.

"Sec. 115. Upon the approval of a petition, the court shall have and may, in addition to the jurisdiction, powers and duties hereinabove and elsewhere in this chapter conferred and imposed upon it, exercise all the powers, not inconsistent with the provisions of this chapter, which a court of the United States would have if it had appointed a receiver in equity of the property of the debtor of the debtor on the ground of insolvency or inability to meet its debts as they mature.

"Sec. 116. Upon the approval of a petition, the judge may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon him and the court—

"(1) permit the rejection of executory contracts of the debtor, except contracts in the public authority, upon notice to the parties to such contracts and to such other parties in interest as the judge may designate;

"(3) authorize a receiver or a trustee or a debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to lease or sell any property of the debtor, whether real or personal upon such terms and conditions as the judge may approve; and

"Sec. 149. An order, which has become final, approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court.

"ARTICLE VII—PROCEEDINGS SUBSEQUENT TO APPROVAL OF PETITION.

"Sec. 167. The trustee upon his appointment and qualification—* * *

"(3) shall report to the judge any facts ascertained by him pertaining to fraud, misconduct, mismanagement and irregularities, and to any causes of action available to the estate;

"Sec. 175. Upon the approval of a plan by the judge, the trustee or the debtor in possession shall transmit, by mail or otherwise, to all creditors and stockholders who are affected by any such plan—

"(1) the plan or plans so approved, together with a summary thereof approved by the judge;

"(2) the opinion of the judge, if any, approving the plan, or plans, or a summary thereof approved by the judge;

"(4) such other matters as the judge may deem necessary or desirable for the information of creditors and stockholders.

"Sec. 179. After a plan has been accepted in writing, filed in court, by or on behalf of creditors holding two-thirds in amount of the claims filed and allowed of each class, and, if the debtor has not been found to be insolvent, by or on behalf of stockholders holding the majority of stock, of which proofs have been filed and allowed, of each class, exclusive of creditors or stockholders or of any class of them who are not affected by the plan or whose claims or stock are disqualified pursuant to section 203 of this Act, or for whom payment or protection has been provided as prescribed in paragraphs (7) and (8) of section 216 of this Act, the judge shall fix a hearing, upon notice to the debtor, creditors, stockholders, indenture trustees, the Secretary of the Treasury, the Securities and Exchange Commission, and such other persons as the judge may designate, for the consideration of the confirmation of the

plan and of such objections as may be made to the confirmation.

"Sec. 180. The order of the judge approving a plan, as provided in section 174 of this Act, shall not affect the right of the debtor, a creditor, indenture trustee, or stockholder to object to the confirmation of the plan.

"ARTICLE VIII—TITLE, RIGHTS, AND POWERS OF TRUSTEES AND DEBTORS IN POSSESSION.

"Sec. 186. A trustee, upon his appointment and qualification, shall be vested with such title as a trustee appointed under section 44 of this Act would have.

"Sec. 187. Where not inconsistent with the provisions of this chapter, a trustee, upon his appointment and qualification, shall be vested with the same rights, be subject to the same duties, and exercise the same powers as a trustee appointed under section 44 of this Act, and, if authorized by the judge, shall have and may exercise such additional rights and powers as a receiver in equity would have if appointed by a court of the United States for the property of the debtor.

"Sec. 189. A trustee or debtor in possession, upon authorization by the judge, shall operate the business and manage the property of the debtor during such period, limited of indefinite, as the judge may from time to time fix, and during such operation or management shall file reports thereof with the court at such intervals as the court may designate.

"Sec. 190. The reports of the trustee or debtor in possession shall be in such form and contain such information as the court may prescribe and shall at all times be open to the examination of any party in interest. The court shall direct copies or summaries of annual reports, and may direct copies or summaries of other reports, to be mailed to the creditors, stockholders, and indenture trustees, and may also direct the publication of summaries of any such reports in such newspaper or newspapers of general circulation as the court may designate. The Securities and Exchange Commission may recommend the form of such reports and summaries.

"Sec. 191. A trustee or debtor in possession may employ officers of the debtor at rates of compensation to be approved by the court. No person shall become an officer or director of the debtor, to fill a vacancy or otherwise, without the prior approval of the court.

"ARTICLE IX—CREDITORS AND STOCKHOLDERS.

"Sec. 197. For the purposes of the plan and its acceptance, the judge shall fix the division of creditors and stockholders into classes according to the nature of their respective claims and stock. For the purposes of such classification, the judge shall, if necessary, upon the application of the trustee, the debtor, any creditor, or an indenture trustee, fix a hearing upon notice to the holders of secured claims, the debtor, the trustee, and such other persons as the judge may designate, to determine summarily the value of the security and classify as unsecured the amount in excess of such value.

"Sec. 200. Where not inconsistent with the provisions of this chapter, the rights, duties, and liabilities of creditors and of all other persons with respect to the property of the debtor shall be the same, before the approval of the petition, as in a bankruptcy proceeding before adjudication and, upon the approval of the petition, as in a bankruptcy proceeding upon adjudication.

"ARTICLE X—PROVISIONS OF PLAN.

"Sec. 216. A plan of reorganization under this chapter—

"(1) shall include in respect to creditors generally or some class of them, secured or unsecured, and may include in respect to stockholders generally or some class of them, provisions altering or modifying their rights, either through the issuance of new securities of any character or otherwise;

"(2) may deal with all or any part of the property of the debtor;

"(4) may provide for the rejection of any executory contract except contracts in the public authority;

"(13) may include provisions for the settlement or adjustment of claims belonging to the debtor or to the estate; and shall provide, as to such claims not settled or adjusted in the plan, for their retention and enforcement by the trustee or, if the debtor has been continued in possession, by an examiner appointed for that purpose; and

"(14) may include any other appropriate provisions not inconsistent with the provisions of this chapter.

"ARTICLE XI—CONFIRMATION AND CONSUMMATION OF PLAN.

"Sec. 221. The judge shall confirm a plan if satisfied that—

"(1) the provisions of article VII, section 199, and article X of this chapter have been complied with;

"(2) the plan is fair and equitable, and feasible;

"(3) the proposal of the plan and its acceptance are in good faith and have not been made or procured by means or promises forbidden by this Act;

"(4) all payments made or promised by the debtor or by a corporation issuing securities or acquiring property under the plan or by any other person, for services and for costs and expenses in, or in connection with the proceeding or in connection with the plan and incident to the reorganization, have been fully disclosed to the judge and are reasonable or, if to be fixed after confirmation of the plan, will be subject to the approval of the judge; and

"(5) the identity, qualifications, and affiliations of the persons who are to be directors or officers, or voting trustees, if any, upon the consummation of the plan, have been fully disclosed, and that the appointment of such persons to such offices, or their continuance therein, is equitable, compatible with the interests of the creditors and stockholders and consistent with public policy.

"Sec. 222. A plan may be altered or modified, with the approval of the judge, after its submission for acceptance and before or after its confirmation if, in the opinion of the judge, the alteration or modification does not materially and adversely affect the interests of creditors or stockholders. If the judge finds that the proposed altera-

tion or modification, filed with his approval, does materially and adversely affect the interests of creditors or stockholders, he shall fix a hearing for the consideration, and a subsequent time for the acceptance or rejection, of such alteration or modification. The requirements in regard to notice of hearing, to submission to the Securities and Exchange Commission, to acceptance, to filing and hearing of objections to confirmation and to the confirmation, as prescribed in article VII of this chapter in regard to the plan proposed to be altered or modified, shall be complied with.

"Sec. 223. Any creditor or stockholder who has previously accepted the plan proposed to be altered or modified and who does not file a written rejection of the proposed alteration or modification within the time fixed by the judge, shall be deemed to have accepted the alteration or modification and the plan so altered or modified unless the previous acceptance provides otherwise.

"Sec. 224. Upon confirmation of a plan—

"(1) the plan and its provisions shall be binding upon the debtor, upon every other corporation issuing securities or acquiring property under the plan, and upon all creditors and stockholders, whether or not such creditors and stockholders are affected by the plan or have accepted it or have filed proofs of their claims or interests and whether or not their claims or interests have been scheduled or allowed or are allowable;

"(2) the debtor and every other corporation organized or to be organized for the purpose of carrying out the plan shall comply with the provisions of the plan and with all orders of the court relative thereto and shall take all action necessary to carry out the plan, including, in the case of a public-utility corporation, the procuring of authorization, approval, or consent of each commission having regulatory jurisdiction over the debtor or such other corporation;

"(3) if the judge shall so direct, there shall be deposited and distributed, in such manner as the judge may direct, the moneys for all payments which by the provisions of the plan or under this chapter are required to be made in cash; and

"(4) distribution shall be made, in accordance with the

provisions of the plan, to creditors and stockholders (a) proofs of whose claims or stock have been filed prior to the date fixed by the judge and are allowed, or (b) if not so filed, whose claims or stock have been listed by the trustee or scheduled by the debtor in possession as fixed claims or stock, liquidated in amount and not disputed.

"Sec. 225. Where the claims or stock specified in paragraph (4), clause (b), of section 224 of this Act are objected to by any party in interest, the objection shall be heard and summarily determined by the court.

"Sec. 226. The property dealt with by the plan, when transferred by the trustee to the debtor or other corporation or corporations provided for by the plan, or when transferred by the debtor in possession to such other corporation or corporations, or when retained by the debtor in possession, as the case may be, shall be free and clear of all claims and interests of the debtor, creditors, and stockholders, except such claims and interests as may otherwise be provided for in the plan or in the order confirming the plan or in the order directing or authorizing the transfer or retention of such property.

"Sec. 227. The court may direct the debtor, its trustee, any mortgagees, indenture trustees, and other necessary parties to execute and deliver or to join in the execution and delivery of such instruments as may be requisite to effect a retention or transfer of property dealt with by a plan which has been confirmed, and to perform such other acts, including the satisfaction of liens, as the court may deem necessary for the consummation of the plan.

"Sec. 228. Upon the consummation of the plan, the judge shall enter a final decree—

"(1) discharging the debtor from all its debts and liabilities and terminating all rights and interests of stockholders of the debtor, except as provided in the plan or in the order confirming the plan or in the order directing or authorizing the transfer or retention of property;

"(2) discharging the trustee, if any;

"(3) making such provisions by way of injunction or otherwise as may be equitable; and

"(4) closing the estate.

FILE COPY

Office - Supreme Court
FILED
OCT 25 19
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946

No. 542

IN THE MATTER OF

BURTON COAL COMPANY, et al.,

Debtors.

MARJORIE HAIR BURTON, individually and as Administratrix of the Estate of Frederic A. Burton, deceased,

Petitioner,

vs.

J. ROY BROWNING, Trustee and FREEMAN COAL MINING CORPORATION,

Respondents.

REPLY TO OPPOSING BRIEF RE PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

JOHN J. DOWDLE,
Attorney for Petitioner.

JOSEPH KEIG,
Of Counsel.

BARNARD & MILLER, 33 S. Market St., Chicago. FRAnklin 0562

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946

No. 542

IN THE MATTER OF

BURTON COAL COMPANY, et al.,

Debtors.

MARJORIE HAIR BURTON, individually and as Administratrix of the Estate of Frederic A. Burton, deceased,

Petitioner,

vs.

J. ROY BROWNING, Trustee and FREEMAN COAL MINING CORPORATION,

Respondents.

REPLY TO OPPOSING BRIEF RE PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

MAY IT PLEASE THE COURT:

Respondents at pages 4 and 5 of their opposing brief set forth reasons for their contention that the claims asserted by petitioner and the controversy arising thereunder do not involve matters and proceedings in bankruptcy. We

shall consider the reasons advanced by respondents in the order in which they are proposed:

> "(a) petitioner is neither a creditor nor a stockholder of the debtor company nor a party in interest and hence is wholly a stranger to the proceedings." (p. 4 Resp. brief)

We reiterate. Petitioner is not and has never claimed to be either a creditor or a stockholder of the debtor company. We contend that petitioner has a right to intervene in this proceeding under Rule 24 (a)(3) of the Federal Rules of Civil Procedure, because she is adversely affected by a distribution or other disposition of property in the custody of an officer of the bankruptcy court. It is our contention that if the debtor ever had a claim to or an interest in petitioner's property it vested in the Trustee Browning at the time he was appointed by the Court in this proceeding.

The Trustee did not settle or adjust the claim in the plan, so that he still retains it and as Trustee, he alone has authority to enforce it under the direction of the bankruptcy court. This controversy therefore involves a matter and proceeding in bankruptcy, and, the bankruptcy court has the exclusive right to determine in what manner the claim against the petitioner shall be enforced.

> "(b) if the trustee had any claim in the lands referred to in the present petition, petitioner would have no interest therein." (p. 4, Resp. brief)

The meaning of this statement is not clear, but if the respondents mean that, if the Trustee has a claim which the bankruptcy court determines to be valid, such an adjudication would extinguish petitioner's interest to the extent that the bankrupcy court determines, then we subscribe. The corollary of respondents' statement is also true: that if the Trustee had no valid claim in the lands

referred to in the present petition, petitioner would have all of the interest therein.

> "(c) There was no estate in bankruptcy any longer in the course of administration for the reason that the Plan of Reorganization had been fully consummated and by its express terms had taken all of the assets and property out of the hands of the Trustee and vested it in the Freeman Coal Mining Corporation." (pp. 4 and 5, Resp. brief)

The provisions of the plan of reorganization confirmed in this proceeding are binding upon the debtor and upon the Freeman Coal Mining Corporation which acquired the property under the plan. Chapter X, Art. 11, Sec. 224, subpar. 1, Bankruptcy Laws of 1938. The plan did not deal with petitioner's lands or any interest therein. The Trustee did not in any manner proceed against said lands or against petitioner. The claim against petitioner was not settled or adjusted in the plan.

Under this circumstance, Sec. 216, subparagraph 13 of the Bankruptcy Laws of 1938, directs that the claim shall be retained and enforced by the Trustee. This provision of the bankruptcy law utterly destroys the pretense of respondent Freeman Coal Mining Corporation that it in some covert manner obtained a special warrant to enforce the claim against petitioner in a state court and in the place and stead of the duly appointed trustee.

> "(d) The controversy is manifestly between the Freeman Coal Mining Corporation and the petitioner, both strangers to the bankruptcy proceedings." (p. 5. Resp. brief)

The Freeman Coal Mining Corporation was organized under the provisions of the Plan to acquire the property of the debtors as set forth in said Plan (R. 21, 22). Upon confirmation of the Plan the Freeman Coal Mining Corporation came under the jurisdiction and was subject to

the direction of the Bankruptcy Court. The order of confirmation so provided (R. 35). It is utterly absurd for the respondent Freeman Coal Mining Corporation to say it is a stranger to proceedings from which it acquired $325,000 in current assets, cash or its equivalent, and approximately $600,000 in fixed assets (R. 31). Petitioner was a stranger to the bankruptcy proceedings and that is why she asks leave to intervene of right in this proceeding under Rule 24 (a)(3) of the Federal Rules of Civil Procedure.

Furthermore, if the respondent Freeman Coal Mining Corporation is a stranger to these proceedings, as it contends, then by what right does it contest petitioner's intervention?

The Freeman Coal Mining Corporation believes itself to be possessed of extra legal powers. This delusion is made manifest by the statement appearing at page 8 of respondents' brief. Referring to the Trustee Browning they say: "Whatever he had or whatever claims he may have asserted as Trustee had passed out of him to the Freeman Coal Mining Corporation, the corporation named in the Plan of Reorganization."

The unbroken line of decisions of this court establishes the principle that the Trustee alone may institute and prosecute causes of action belonging to a bankrupt or a debtor under the Bankruptcy Act unless the suit has been instituted prior to the appointment of the Trustee or unless the Plan of Reorganization provides some other method for their prosecution.

> "(e) the claims of the petitioners had been tried and disposed of in a court of competent jurisdiction and the decision of the Circuit Court of Cook County as affirmed by the Supreme Court of Illinois is *res judicata.*" (p. 5, Resp. brief)

We here readopt the statement appearing in our brief at page 9, which reads as follows:

> "The only question involved in this case is whether the Trustee in Bankruptcy had or has a cause of action against petitioner affecting her title to valuable coal lands. If the Trustee ever had a cause of action against petitioner he still has it and the Bankruptcy Court alone has jurisdiction to determine how it shall be enforced." Citing cases.

As this Court says, in the case of *Meyer* v. *Fleming* 327 U. S. 161, 169:

> "If the claims were to be filed after a petition for the reorganization of St. Lewis Southwestern had been approved, it could only be done with the consent of the bankruptcy court. For it has exclusive authority to determine how causes of action which have become part of the bankruptcy estate shall be enforced."

The Bankruptcy Court having exclusive jurisdiction of the subject matter, the purported decree of the Circuit Court of Cook County is a nullity and the doctrine of *res judicata* has no application.

Petitioner was, as respondents assert and as we admit, a stranger to the bankruptcy proceedings. That is why the discussion concerning matters which transpired in the bankruptcy proceedings relating to the petition of Fred A. Burton to be declared the sole stockholder of the Burton Coal Company has no relevancy. The stock ownership of the Burton Coal Company was finally adjudicated in the reorganization proceedings and as we stated in our brief at page 9, the respondents alone call the matter into question.

The petition for certiorari should be granted.

Respectfully submitted,

JOHN J. DOWDLE,
Attorney for Petitioner.

JOSEPH KEIG,
Of Counsel.

Dated October 24, 1946.

FILE COPY

FILED
OCT 21 19
CHARLES ELMORE CR

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 542

IN THE MATTER OF

BURTON COAL COMPANY, ET AL.,

DEBTORS.

MARJORIE HAIR BURTON, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF FREDERIC A. BURTON, DECEASED,

Petitioner,

vs.

J. ROY BROWNING, TRUSTEE AND FREEMAN COAL MINING CORPORATION,

Respondents.

OPPOSING BRIEF RE PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

HENRY S. BLUM,
Attorney for Respondents.

THE BUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

INDEX.

	PAGE
Statement of the Matters Involved	1
Jurisdiction of this Court	4
Questions Presented	5
Summary of Argument	6
Argument	7

Table of Cases Cited.

Acme Harvester Co. v. Beekman Lumber Co., 222 U. S. 300	9
Burton v. Freeman Coal Mining Corp., 325 U. S. 859	4, 10
Flatbush Avenue-Nevin Street Corporation, 133 Fed. (2d) 760	10
Freeman Coal Mining Corporation v. Burton, et al., 338 Ill. 604	4
Glenny v. Langdon, 98 U. S. 20	9
In re Burton, 126 Fed. (2d) 447	2
In re Lubliner & Trinz Co., 100 Fed. (2d) 646	10
Moyer v. Dewey, 103 U. S. 301	9
Re Ambassador Hotel Corporation, 124 Fed. (2d) 435	10
Smith v. Chase National Bank of the City of New York, 84 Fed. (2d) 608	10
Sylvan Beach v. Koch, 140 Fed. (2d) 862	10
Trimble v. Woodhead, 102 U. S. 647	9

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 542.

IN THE MATTER OF

BURTON COAL COMPANY, ET AL.,

DEBTORS.

MARJORIE HAIR BURTON, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF FREDERIC A. BURTON, DECEASED,

Petitioner,

vs.

J. ROY BROWNING, TRUSTEE AND FREEMAN COAL MINING CORPORATION,

Respondents.

OPPOSING BRIEF RE PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

STATEMENT OF THE MATTERS INVOLVED.

Under the foregoing heading petitioner sets out a purported statement of the case. To correct the inaccuracies and omissions in the foregoing statement, we advise the Court as follows:

The petitioner fails to advise the Court of her status or interest in the estate in bankruptcy of the Burton Coal Company or the other debtor companies. She is not, however, either in her representative capacity as administratrix of the deceased, or individually, a creditor, stockholder or otherwise a party in interest in the bankruptcy estate (Tr. 98). The District Court has so found. She is not a person, either individually or in her representative capacity as administratrix of the deceased, entitled to any right of participation under the Plan of Reorganization (Tr. 9, *et seq.*). She is wholly a stranger to the proceedings.

The Circuit Court of Appeals of the Seventh Circuit dismissed as frivolous an appeal by her from an order of the District Court denying leave to file a petition to intervene in the case (Tr. 98). This petition was lodged with the District Court on June 26, 1945 (Tr. 97). The chronology of the proceedings below is, briefly, as follows:

The petition for reorganization of the debtor company was filed September 7, 1938. J. Roy Browning was appointed trustee September 9, 1938 (Tr. 9). The Trustee's Plan of Reorganization was approved by the Court February 4, 1942 (Tr. 32). This was in the face of intervening litigation of which *In Re: Burton*, 126 Fed. (2d) 447 is illustrative (Tr. 97). The approved plan was confirmed March 27, 1942 (Tr. 36) and the Plan of Reorganization entirely consummated October 1, 1942 (Tr. 84). October 29, 1942 Fred A. Burton (now deceased) filed a petition in the District Court (Tr. 97) containing, among other matters, the charges implicit in the petition under consideration and asking that the Plan of Reorganization be vacated. On June 23, 1943, after numerous hearings, the Special Master to whom the application to file the petition was referred recommended that the petition be dismissed as not being in

good faith. On October 5, 1943 the District Court overruled the recommendations of the Special Master and referred the matter to the Securities and Exchange Commission for investigation (Tr. 97). On April 25, 1944 the Securities and Exchange Commission filed its memorandum, and on October 24, 1944 the District Court made its order overruling the prayer of Burton's petition and finding, among other matters, that Fred A. Burton was neither a creditor nor a stockholder nor a party in interest in the proceedings.

The Plan of Reorganization required that all of the assets and the property in the possession or control of the Trustee in the proceedings, excepting certain items of worthless accounts receivable (Tr. 20), be conveyed to the Freeman Coal Mining Corporation.

On June 24, 1942 the Freeman Coal Mining Corporation filed its complaint in the Circuit Court of Cook County, Illinois (Tr. 37) alleging that it had acquired by reason of the Plan of Reorganization and the conveyance to it an equitable estate in the identical real estate which is the subject matter of the petition attempted to be filed by Petitioner. The plaintiff in the action, The Freeman Coal Mining Corporation, alleged that the property referred to had been bought with money which Frederick A. Burton unlawfully took from the Burton Coal Company and that he took title to the land in fraud of that company's rights. On December 1, 1943 the Circuit Court of Cook County entered a decree sustaining the Freeman Coal Mining Corporation's complaint (Tr. 6), granting its prayers and directing the Burtons to convey the land to the Freeman Coal Mining Corporation.

The Burtons in defense of the action filed in the Circuit Court of Cook County, Illinois made the same claims as are present in the petition and these were all considered and

passed upon by the Supreme Court of Illinois in its opinion. *Freeman Coal Mining Corporation* v. *Burton, et al.*, 338 Ill. 604. The petitioner individually and as administratrix of the Estate of Fred A. Burton, Deceased filed her petition in this Court for a writ of *certiorari* to the Supreme Court of Illinois, which petition was on May 21, 1945 denied. *Burton* v. *Freeman Coal Mining Corp.*, 325 U. S. 859.

The Plan of Reorganization is nothing more than a promise by the Freeman Coal Mining Corporation to pay all of the liabilities of the estates of the Burton Coal Company, The Freeman Coal Mining Company and the Seymour Coal Mining Company in consideration of the transfer to it of all of the assets in the hands of the Trustee. When the assets were transferred and the Plan of Reorganization consummated, nothing remained except to close the estate and discharge the Trustee. There was no estate in the course of administration at the time this petitioner attempted to file her petition.

Jurisdiction of This Court.

The statement of petitioner under this heading is a misconception both of the law and the facts:

The claims asserted by petitioner and the controversy arising thereunder does not involve a matter and proceeding in bankruptcy, for the reason that (a) petitioner is neither a creditor nor a stockholder of the debtor company, nor a party in interest and hence is wholly a stranger to the proceedings; (b) if the trustee had any claim in the lands referred to in the present petition, petitioner would have no interest therein; (c) there was no estate in bankruptcy any longer in the course of administration for the reason that the Plan of Reorganization had been fully

consummated and by its express terms had taken all of the assets and property out of the hands of the Trustee and vested it in the Freeman Coal Mining Corporation; (d) the controversy is manifestly between the Freeman Coal Mining Corporation and the petitioner, both strangers to the bankruptcy proceedings and, finally (e) the claims of the petitioners had been tried and disposed of in a court of competent jurisdiction and the decision of the Circuit Court of Cook County as affirmed by the Supreme Court of Illinois is *res judicata.*

Questions Presented.

We content ourselves with pointing out that the questions stated by petitioner have no relevancy to the record this Court is considering.

SUMMARY OF ARGUMENT.

The petition and the brief in support thereof assume that the lands claimed to be owned by the petitioner were, notwithstanding her own claim of ownership therein, in some manner a part of an estate in bankruptcy; that the decree of the Circuit Court of Cook County, Illinois was and is an interference in the administration of an estate in bankruptcy.

This assumption is contrary to the record. The lands in question and all of the rights of the bankruptcy trustee had been, prior to the attempted filing by petitioner in the District Court of her petition, conveyed pursuant to the Plan of Reorganization and the orders of the bankruptcy court to the Freeman Coal Mining Corporation; that at the time of the attempted filing of this petition there was no estate in bankruptcy in the course of administration nor was she a creditor, stockholder or any other party in interest in the bankruptcy estate.

The Freeman Coal Mining Corporation is, as to the bankruptcy estate, a third person and the petitioner as a claimant with respect to the lands is likewise a third person; it is no part of the business of the bankruptcy court to litigate claims of strangers to the estate as to property in which the trustee has or can acquire no interest.

ARGUMENT.

Counsel for petitioner open their argument with the bald statement that the Circuit Court of Appeals was imposed upon by the respondents. The explanation of this comment does not appear to be wholly intelligible.

The question of ownership of the stock in the debtor, Burton Coal Company, ties in with the fact that Burton's interest as a stockholder had been in his lifetime lawfully terminated by the pledgee of the stock and this goes to the matter of petitioner's lack of interest in the estate. Neither petitioner nor the deceased were or claimed to be creditors of the Burton Coal Company. Her proposed petition hence is an attempt to compel the Trustee in bankruptcy to recapture lands which she claims he had conveyed without lawful right or authority to the Freeman Coal Mining Corporation. If the Trustee were to recapture the lands he would, as a trustee in bankruptcy and under the law, be required to administer it for the benefit (1) of the creditors of the Burton Coal Company, and (2) after the claims of creditors were satisfied for the stockholders of the company.

The opinion of the Circuit Court of Appeals refers to the lack of interest of any sort, as stockholder, creditor or otherwise, by the petitioner in the estate or any right of distribution whatsoever. This conclusion of the Court below ultimately involves the legality of the foreclosure on Burton's stock in his lifetime; and hence it is not irrelevant to point out that deceased had lost his stock interest by a valid foreclosure and the petitioner, whether individually or as administratrix, is a party wholly without any interest in any property, including this land that was in, or might

come into, the hands of the bankruptcy trustee. She was and is, on her own theory, a mere interloper, seeking to adjust rights between Browning, the Trustee, and the Freeman Coal Mining Corporation with reference to property the recapture of which cannot under any circumstances, nor in any way, inure to her benefit.

What this ultimately amounts to is an attempt by a stranger to the bankruptcy proceedings to compel a trustee in bankruptcy to recapture property which she says the trustee unlawfully parted with and, having so done, not to administer the property recaptured as part of an estate in bankruptcy but to deliver it to her, a stranger to the estate, on her claim that she is the owner of it. This is no part of the business of a bankruptcy court.

The argument proceeds as though this were a claim by the trustee in bankruptcy against either the petitioner or to the lands in question. Browning, the Trustee, neither has nor asserts either claim. The trustee has no claim and asserts nothing. On this record the trustee has been wholly divested of all title to all the property, awaiting merely the order of discharge and the closing of the case. Whatever he had or whatever claims he may have asserted as trustee have passed out of him to the Freeman Coal Mining Corporation, the corporation named in the Plan of Reorganization.

That was the purport and effect of the Plan of Reorganization confirmed and consummated before this petition was filed. The Property To Be Dealt With By The Plan is set out in Article V of the Plan (Tr. 20). Eliminating the details which were to be taken "without limiting the generality of the foregoing," the property to be conveyed to the Freeman Coal Mining Corporation is described in the broadest language possible as "all the estate and property of the Burton Coal Company, Debtor." Identical

language is to be found with respect to each of the other two debtor corporations. The claims of all the creditors and stockholders were considered and the respective rights and benefits under the Plan of Reorganization allocated by the Plan (Tr. 9-31). The order of confirmation (Tr. 32) spells out in a way that leaves no room for misunderstanding the purpose and intention of the order. The case was to be closed by the confirmation and consummation of the Plan of Reorganization. It was so closed.

On the consummation of the Plan of Reorganization, Browning, the Trustee of the debtor corporations, parted with title to and possession of the property in question as a part of all the estate and property of the debtor corporations (Tr. 5). The rights of all creditors, stockholders and parties in interest to the estate are also disposed of by the Plan (Tr. 15-20), thus leaving neither claims nor interests in the estate or property to be further administered by the bankruptcy court.

The cases cited by petitioner demonstrate this strange misconception of the record on the part of the petitioner. *Glenny* v. *Langdon,* 98 U. S. 20; *Trimble* v. *Woodhead,* 102 U. S. 647; *Moyer* v. *Dewey,* 103 U. S. 301, 303; and *Acme Harvester Co.* v. *Beekman Lumber Co.,* 222 U. S. 300, 308, are all cases of creditors of a bankruptcy estate asserting their rights as creditors of such estate to property, title to which was or was claimed to be in *custodia legis* by reason of the fact that there was an estate in bankruptcy in the course of administration. These citations are wholly inapplicable for the reason that (a) there was no estate in administration; (b) petitioner was not a creditor of any estate in bankruptcy; and (c) that title to the property in question was vested by proper deeds of conveyance in the Freeman Coal Mining Corporation against whom petitioner is now asserting a claim.

It is well-settled law that the District Court as a court of bankruptcy has no right to assume jurisdiction of a controversy between third parties in which the trustee is not concerned and decide whose case is paramount in equity. *Smith* v. *Chase National Bank of the City of New York,* 84 Fed. (2d) 608 (C. C. A. 8); *In re Lubliner and Trinz Co.,* 100 Fed. (2d) 646 (C. C. A. 7); *Sylvan Beach* v. *Koch,* 140 Fed. (2d) 862 (C. C. A. 8). A court of bankruptcy loses jurisdiction over the reorganized company or the property acquired by it after the consummation of a Plan of Reorganization under Chapter 10 of the Bankruptcy Act. *Re Ambassador Hotel Corporation,* 124 Fed. (2d) 435; *Flatbush Avenue—Nevin Street Corporation,* 133 Fed. (2d) 760.

Substantially the same questions as those appearing in the present petition for *certiorari* were raised by the petitioner in Petition for *Certiorari* filed by her in *Burton* v. *Freeman Coal Mining Corporation,* 325 U. S. 859.

Petition for *certiorari* should be denied.

Respectfully submitted,

HENRY S. BLUM,

Attorney for Respondents.